

REMARKS

Reconsideration and withdrawal of the assertion in the January 24, 2006 Office Communication, that the December 22, 2005 newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed, is respectfully requested in view of the amendments and remarks herewith.

Claims 25-44 are under consideration in this application. All previous claims were cancelled without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. Applicants reserve the right to pursue the subject matter of cancelled claims in continuing application.

No new matter has been added.

The original claims recite to an infectivity-enhanced conditionally-replicative adenovirus, methods of killing tumor cells in an individual by administering the claimed adenovirus, and to methods of providing adenoviral gene therapy in an individual by administration of the adenovirus.

All new claims are directed towards either an infectivity-enhanced conditionally-replicative adenovirus or to methods of reducing tumor burden comprising administering to the subject a therapeutically effective amount of a modified conditionally replicative adenovirus which has greater infectivity in tumor cells than wild-type adenovirus. It is respectfully asserted that the methods of reducing tumor burden presently claimed are not distinct from the originally claimed invention.

In particular, claims 25-33 as presented herein are directed to an infectivity-enhanced conditionally replicating adenovirus rather than to a conditional replication-enabling system.

Furthermore, newly submitted claims 34-46 recite to a method of reducing tumor burden by administering the claimed adenoviruses. Specifically, claims 34-42 relate to a method of reducing tumor burden comprised of administering a modified conditionally replicative adenovirus which is a subtype 5, containing and expressing a nucleotide sequence encoding the fiber domain from an adenovirus subtype 3 and wherein the modified conditionally replicative adenovirus contains a nucleotide sequence encoding VEGF promoter region. The claims further recite to various types of cancer cells other than lung cancer for which these infectivity-enhanced VEGF promoter-based CRAds showed a significant cell killing effect. Support for these claims

is found throughout the specification, more in particular, throughout Example 13 and Figures 23-31.

Claim 43 relates to a method of reducing tumor burden by administering a modified conditionally replicative adenovirus containing and expressing a nucleotide sequence encoding the knob domain of the canine adenovirus type 2 and wherein the modified conditionally replicative adenovirus contains a nucleotide sequence encoding either CXCR4 or survivin promoters. Claim 44 further recites to the therapeutic utility of the adenovirus in suppression of tumor growth of human breast cancer. Support for these claims is found throughout the specification, more in particular, throughout Example 14 and Figures 32-35.

Therefore, the claims are no longer directed to a “conditional replication-enabling system” but rather relate to the invention as originally claimed. In view of the above, reconsideration and withdrawal of the assertion in the December 22, 2005 newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed, is respectfully requested.

As a traverse, the remarks of the December 22, 2005 Amendment are hereby incorporated herein by reference and it is nonetheless respectfully asserted that there is no undue or serious burden upon the Examiner searching all recited adenovirus species and modifications thereof as a unifying feature is the infectivity enhanced conditionally replicative adenovirus.

REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, a further interview with the Examiner is respectfully requested and the Examiner is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the remarks, amendments and Declaration, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: Deborah L. Lu
Thomas J. Kowalski
Reg. No. 32,147
Deborah L. Lu
Reg. No. 50,940
Telephone: (212) 588-0800
Facsimile: (212) 588-0500